

## **Assembly Bill No. 438**

### **CHAPTER 611**

An act to amend Sections 19104 and 19116 of, and to add and repeal Section 19104.5 of, the Education Code, relating to libraries.

[Approved by Governor October 8, 2011. Filed with  
Secretary of State October 8, 2011.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 438, Williams. County free libraries: withdrawal: use of private contractors.

Existing law provides that the county boards of supervisors may establish and maintain, within their respective counties, county free libraries pursuant to specified provisions of law. Existing law provides that the board of trustees, common council, or other legislative body of any city or the board of trustees of any library district may, on or before January 1 of any year, notify the county board of supervisors that the city or library district no longer desires to be a part of the county free library system, as specified.

This bill would impose specified requirements if the board of trustees, common council, or other legislative body of a city or the board of trustees of a library district intends to withdraw from the county free library system and operate the city's or library district's library or libraries with a private contractor that will employ library staff to achieve cost savings, unless the library or libraries are funded only by the proceeds of a special tax imposed by the city or library district. These requirements, until January 1, 2019, would include, but not be limited to, publishing notice of the contemplated action in a specified manner, clearly demonstrating that the contract will result in actual overall cost savings to the city or library district for the duration of the entire contract, as specified, prohibiting the contract from causing existing city or library district employees to incur a loss of employment or specified benefits or an involuntary transfer, and imposing specified requirements on contracts for library services in excess of \$100,000 annually. The bill would also provide that its provisions do not preclude a city, library district, or local government from adopting more restrictive rules regarding the contracting of public services, and would prohibit its provisions from applying to contracts between a city or library district and a nonprofit organization if specified requirements are met.

*The people of the State of California do enact as follows:*

SECTION 1. Section 19104 of the Education Code is amended to read:

19104. (a) The board of trustees, common council, or other legislative body of a city or the board of trustees of a library district may, on or before January 1 of any year, notify the county board of supervisors that the city or library district no longer desires to be a part of the county free library system. The notice shall be accompanied by a statement complying with the requirements of Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code. The clerk of the board of supervisors shall file the statement with the county assessor and the State Board of Equalization. Thereafter the city or library district shall cease to participate in the benefits of the county free library system, and the property situated in the city or library district shall not be liable for taxes for county free library purposes.

(b) If the board of trustees, common council, or other legislative body of a city or the board of trustees of a library district intends to withdraw from the county free library system and operate the city's or the district's library or libraries with a private contractor that will employ library staff to achieve cost savings, the requirements of Section 19104.5 shall apply, unless the library or libraries are funded only by the proceeds of a special tax imposed by the city or library district pursuant to Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code.

SEC. 2. Section 19104.5 is added to the Education Code, to read:

19104.5. (a) If the board of trustees, common council, or other legislative body of a city or the board of trustees of a library district intends to withdraw from the county free library system and operate the city's or the district's library or libraries with a private contractor that will employ library staff to achieve cost savings, all of the following requirements shall apply:

(1) At least once a week for four consecutive weeks prior to taking any action, the board of trustees, common council, or other legislative body of the city or the board of trustees of the library district shall publish, in a newspaper designated by it and circulated throughout the city or library district, notice of the contemplated action, giving the date and place of the meeting at which the contemplated action is proposed to be taken.

(2) The board of trustees, common council, or other legislative body of a city or the board of trustees of a library district shall clearly demonstrate that the contract will result in actual overall cost savings to the city or library district for the duration of the entire contract as compared with the city's or library district's actual costs of providing the same services, provided that, in comparing costs, all of the following occur:

(A) The city's or library district's additional cost of providing the same services as proposed by the contract shall be included. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the necessary functions of the library.

(B) The city's or library district's indirect overhead costs shall not be included unless those costs can be attributed solely to the function in question and would not exist if that function was not performed by the city or library

district. For purposes of this subparagraph, “indirect overhead costs” means the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) The cost of a contractor providing a service for any continuing city or library district costs that would be directly associated with the contracted function shall be included. Continuing city or library district costs shall include, but not be limited to, costs for inspection, supervision, and monitoring.

(3) The contract shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Contracts shall be eligible for approval if the contractor’s wages are at the industry’s level and do not undercut city or library district pay rates.

(4) The contract shall not cause an existing city or library district employee to incur a loss of his or her employment or employment seniority, a reduction in wages, benefits, or hours, or an involuntary transfer to a new location requiring a change in residence.

(5) The contract shall be awarded through a publicized, competitive bidding process.

(6) The contract shall include specific provisions pertaining to the qualifications of the staff that will perform the work under the contract, as well as assurances that the contractor’s hiring practices meet applicable nondiscrimination standards.

(7) The contract shall provide that it may be terminated at any time by the city or library district without penalty if there is a material breach of the contract and notice is provided within 30 days of termination.

(8) If the contract is for library services in excess of one hundred thousand dollars (\$100,000) annually, all of the following shall occur:

(A) The city or library district shall require the contractor to disclose all of the following information as part of its bid, application, or answer to a request for proposal:

(i) A description of all charges, claims, or complaints filed against the contractor with any federal, state, or local administrative agency during the prior 10 years.

(ii) A description of all civil complaints filed against the contractor in any state or federal court during the prior 10 years.

(iii) A description of all state or federal criminal complaints or indictments filed against the contractor, or any of its officers, directors, or managers, at any time.

(iv) A description of any debarments of the contractor by any public agency or licensing body at any time.

(B) The city or library district shall include in the contract specific, measurable performance standards and provisions for a performance audit by the city or library district, or an independent auditor approved by the city or library district, to determine whether the performance standards are being met and whether the contractor is in compliance with applicable laws and regulations. The city or library district shall not renew or extend the contract prior to receiving and considering the audit report.

(C) The contract shall include provisions for an audit by the city or library district, or an independent auditor approved by the city or library district, to determine whether and to what extent the anticipated cost savings have actually been realized. The city or library district shall not renew or extend the contract before receiving and considering the audit report.

(9) The term of the contract shall not be more than five years from the date on which the board of trustees, common council, or other legislative body of a city or the board of trustees of a library district approves the contract.

(b) This section does not preclude a city, library district, or local government from adopting more restrictive rules regarding the contracting of public services.

(c) This section shall not apply to contracts between a city or library district and a nonprofit organization if both of the following requirements are met:

(1) The nonprofit organization shall not be a parent or subsidiary of a for-profit entity.

(2) The contract shall prohibit the nonprofit organization from subcontracting the obligation to operate the library or libraries and to employ and supervise library staff.

(d) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 3. Section 19116 of the Education Code is amended to read:

19116. (a) (1) Sections 19104 and 19105 are not applicable to the withdrawal of a city or library district from the county free library system in Los Angeles County or Riverside County. The legislative body of a city or the board of trustees of a library district, whose jurisdiction is within the County of Los Angeles or the County of Riverside, may notify the board of supervisors for Los Angeles County or Riverside County, as appropriate, that the city or library district no longer desires to be a part of the county free library system. The notice shall state whether the city or library district intends to acquire property pursuant to subdivision (c). The board of supervisors shall transmit a copy of the notice to the Los Angeles County Assessor or Riverside County Assessor, as appropriate, the Los Angeles County Auditor or Riverside County Auditor, as appropriate, and the State Board of Equalization.

(2) If the city's legislative body or the library district's board of trustees intends to withdraw from the county free library system and operate the city's or the district's library or libraries with a private contractor that will employ library staff to achieve cost savings, the requirements of Section 19104.5 shall also apply, unless the library or libraries are funded only by the proceeds of a special tax imposed by the city or library district pursuant to Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code.

(b) When a city or library district files a notice pursuant to subdivision (a), it shall remain a member of the county free library system until July 1

of the base year or the date on which property is transferred pursuant to subdivision (c), whichever date is later. Upon ceasing to be a member of the county free library system, the city or library district shall not participate in any benefits of the county free library system, and shall assume the responsibility for the provision of library services within its jurisdiction. Unless otherwise agreed by July 1 of the base year in writing by the Board of Supervisors of Los Angeles County or the Board of Supervisors of Riverside County, as appropriate, and the withdrawing city or library district, an amount of property tax revenue equal to the property tax revenues allocated to the county free library pursuant to Article 2 (commencing with Section 96) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code in the fiscal year prior to the base year and that were derived from property situated within the boundaries of the withdrawing entity shall be allocated to and used to maintain library services by the withdrawing entity in the base year and, adjusted forward, in each fiscal year thereafter at the same time allocations are made pursuant to Article 2 (commencing with Section 96) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code. This subdivision shall not apply to property tax revenues that have been pledged to repay bonded indebtedness of the county free library system.

(c) If there are one or more county library facilities within the territorial boundaries of the withdrawing entity at the time the withdrawing entity provides notice pursuant to subdivision (a), the withdrawing entity shall have the right to acquire any or all of those facilities from the county and the county shall, no later than July 1 of the base year, transfer to the withdrawing entity each facility to be acquired and the personal property therein related to the provision of library services. If the facility or personal property was purchased with bond proceeds or other forms of indebtedness, acquisition shall only take place if the withdrawing entity assumes any remaining indebtedness and in no way impairs the repayment thereof. If the withdrawing entity opts not to acquire any facilities or personal property, the county at its discretion may dispose of the facilities or personal property or convert the use of those facilities or personal property, including transferring collections and other personal property to other sites and converting facilities to other purposes. If the withdrawing entity opts to acquire any facilities or personal property, the acquisition prices shall be as follows unless otherwise provided for by statute or contract:

(1) Each county library facility which, for purposes of this section, shall include the real property upon which the facility is located and any fixtures therein and shall not include computer systems and software, shall be transferred for the lesser of:

(A) No cost, if the facility was donated to the county by the withdrawing entity.

(B) The price paid to the withdrawing entity by the county for the facility, if the county bought the facility from the withdrawing entity. However, if the county constructed capital improvements to the facility after it was bought from the withdrawing entity, the county's total out-of-pocket costs

for the capital improvement excluding any costs for routine repairs, restoration, or maintenance, shall be added to the price.

(C) The fair market value of the facility. However, if any portion of the facility was donated to the county by the withdrawing entity or if any moneys were donated by the withdrawing entity toward the county's construction or acquisition of the facility or any portion thereof, the value of the donation shall be subtracted from the fair market value.

(2) Any personal property within the facility related to the provision of library services, including books and resource materials, computer systems and software, furniture, and furnishings, shall be transferred for the lesser of:

(A) No cost, if the property was donated to the county by the withdrawing entity.

(B) The fair market value of the personal property. However, on or before the March 1 preceding the July 1 of the base year, the county librarian may designate collections of resource books and materials that are unique in, and integral to, the county free library system to be special collections. The special collections shall be acquired by the withdrawing entity only upon mutually agreeable terms and conditions.

(d) If a facility transferred pursuant to subdivision (c) serves residents of surrounding jurisdictions, the board of supervisors governing the county free library system may require, as a condition of transferring the facility, that the library services provided by the withdrawing entity to its residents also be available on the same basis to the residents of the surrounding jurisdictions. However, if the withdrawing entity contributes to the provision of library services from other city funds, or through taxes, assessments, or fees of its residents, the withdrawing entity may provide additional services to its residents. If the requirement to provide regional services is imposed and, unless otherwise agreed in writing by the county and the withdrawing entity by July 1 of the base year, an amount of property tax revenues equal to the property tax revenues derived from property situated in the surrounding jurisdictions that were, in the fiscal year before the base year, allocated to the county free library system pursuant to Article 2 (commencing with Section 96) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code shall be allocated to and used to maintain library services by the withdrawing entity in the base year and, adjusted forward, in each fiscal year thereafter at the same time other allocations are made pursuant to Article 2 (commencing with Section 96) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code. This subdivision shall not apply to property tax revenues that have been pledged to repay bonded indebtedness. If a surrounding jurisdiction subsequently provides notice of its intent to withdraw from the county free library system pursuant to subdivision (a), on the date the surrounding jurisdiction ceases to participate in the benefits of the county free library system pursuant to subdivision (b), the withdrawing entity shall no longer be required to make library services available to the residents of the surrounding jurisdiction and property tax

revenues derived from property situated in the surrounding jurisdiction shall no longer be allocated to the withdrawing entity pursuant to this subdivision.

(e) For purposes of this section, the following terms are defined as follows:

(1) “Base year” means the fiscal year commencing on the July 1 following the December 2 following the date of the notice given pursuant to subdivision (a) of this section.

(2) “Fair market value” means:

(A) Any value agreed upon by the withdrawing entity and the county.

(B) If no agreement as to value is reached by the March 1 preceding the July 1 of the base year, the value assigned by an appraiser agreed upon by the withdrawing entity and the county.

(C) If no agreement as to the appointment of an appraiser is reached pursuant to subparagraph (B) by the April 1 preceding the July 1 of the base year, the value assigned by an appraiser agreed upon between the withdrawing entity’s appraiser and the county’s appraiser.

(D) If no agreement as to the appointment of an appraiser is reached pursuant to subparagraph (C) by the May 1 preceding the July 1 of the base year, the value assigned by a state-certified appraiser designated by the withdrawing entity. The designated appraiser shall provide the appraisal in writing to the county no later than the June 1 preceding the July 1 of the base year.

(E) The withdrawing entity shall reimburse the county for any appraisal costs the county incurs in determining the fair market value pursuant to this section.

(3) “Surrounding jurisdictions” means cities and library districts that are adjacent to the withdrawing entity and tax rate areas in unincorporated areas of the county that are wholly or partially within the withdrawing entity’s sphere of influence, that are within the county free library system, and that have no facility within their territorial boundaries providing library services at the time the withdrawing entity provides notice pursuant to subdivision (a).